

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHERYL MANDELL

Plaintiff,

v.

WELLS FARGO BANK

Defendants.

3:10-cv-00764-LRH-VPC

ORDER

March 1, 2011

Before the court is plaintiff's application for leave to proceed *in forma pauperis*, accompanied by her *pro se* civil rights complaint and exhibits, which she filed on December 8, 2010 (#1).¹ In her application and financial affidavit, plaintiff indicates she that receives a monthly income of \$2429.43. *Id.* Plaintiff claims that her monthly expenses total approximately \$2379.82.² *Id.* at 2. Based upon the foregoing, the court grants plaintiff's application to proceed *in forma pauperis*. However, the court's preliminary review of plaintiff's complaint (#1-1) reveals that it fails to state a claim upon which relief may be granted; therefore, the complaint is dismissed without prejudice and with leave to amend pursuant to this Order.

Applications to proceed *in forma pauperis* are governed by 28 U.S.C. § 1915, which provides that "the court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and this court applies the same standard under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint.

¹ Refers to the court's docket numbers.

² Plaintiff attaches a letter to her application to proceed *in forma pauperis*, which also details her expenses (#1, p. 3-4). While the expenses appear to duplicate those provided in the application, the total is incorrectly listed as \$2349.85. *Id.* at 3. The correct total is \$2379.82, which matches the total expenses included in the application.

1 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp.*
 2 *of America*, 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic
 3 recitation of the elements of a cause of action;” it must contain factual allegations sufficient to “raise
 4 a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
 5 (2007). “The pleading must contain something more . . . than . . . a statement of facts that merely
 6 creates a suspicion [of] a legally cognizable right of action.” *Id.* (quoting 5 C. Wright & A. Miller,
 7 Federal Practice and Procedure § 1216, at 235-36 (3d ed. 2004)). In reviewing a complaint under
 8 this standard, the court must accept as true the allegations of the complaint in question, *Hosp. Bldg.*
 9 *Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976), construe the pleading in the light most
 10 favorable to plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S.
 11 411, 421 (1969).

12 “To sustain an action under Section 1983, a plaintiff must show (1) that the conduct
 13 complained of was committed by a person acting under color of state law; and (2) that the conduct
 14 deprived the plaintiff of a federal constitutional or statutory right.” *Wood v. Ostrader*, 879 F.2d 583,
 15 587 (9th Cir. 1989), *cert. denied*, 498 U.S. 938 (1990). Allegations in *pro se* complaints are held
 16 to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S.
 17 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*); *see also Balistreri v.*
 18 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

19 In the instant case, plaintiff’s complaint fails to state sufficient facts to demonstrate a
 20 potential violation of her civil rights. Plaintiff sues Wells Fargo Bank (“defendant”), claiming that
 21 the company “said one thing + inforced [sic] another (ELF account)” (#1-1, p. 2). Plaintiff’s
 22 complaint in its entirety states:

23 I took out an ELF account to start a business + home occupied business starts in 2017
 24 + 2047. They closed my account + sold my house to Lund Realty. They told me
 owed back payment before the due date.

25 ///

26 ///

27 ///

28 ///

1 1998

1001 + 0002

2 One missing receipt = 2007

One missing receipt

3 5/16/08 \$640.00

5/16/2008 1,423.26

4 5/30/08 \$587.66

6/30/08 70.90

6/30/08 239.06

7/30/08 70.90

7/30/08 239.06

8/29/08 70.90

8/29/08 239.06

10/02//08 239.06

10/02/08 70.90

10/30/08 236.046 10/30/08 70.90

2086.64

Receipts are missing 2111.06

7 I followed the contract which Wells Fargo Bank Cannot get a copy of. Then lost my
 8 house by following their contract. [Previously] I described payments made except for
 9 those receipts that have been lost or are in Utah unobtainable [sic] by me. With
 10 Wells Fargo Bank you follow the ELF account to build a business + loose [sic]
 everything while growing in business.

11 *Id.* at 3-4. Plaintiff also submits copies of receipts indicating payment on a line of credit and a
 12 consumer loan account. *Id.* at 10-13.

13 Plaintiff's complaint does not include any specific allegations against identified individuals
 14 acting under color of state law, and the facts provided by plaintiff are confusing and vague. The
 15 court declines to speculate as to the significance of the receipts and amounts provided by plaintiff.
 16 Additionally, without a copy of the alleged agreement between plaintiff and defendants and more
 17 details regarding the actions taken by defendant that purportedly breached the agreement, the court
 18 is unable to determine what plaintiff means when she says defendant "said one thing + inforced [sic]
 19 another (ELF account)." Based on the information provided by plaintiff, the court is unclear as to
 20 which rights she believes defendants violated.

21 As set forth above, plaintiff has failed to state a claim upon which relief can be granted.
 22 Therefore, it is recommended that plaintiff's application to proceed *in forma pauperis* (#1) be
 23 granted and that her complaint (#1-1) be dismissed without prejudice. Plaintiff is advised that a
 24 complaint pursuant to 42 U.S.C. § 1983 should set forth a concise statement of facts that demonstrate
 25 a violation of plaintiff's civil rights and should identify the specific individuals, acting under color
 26 of state law, responsible for the alleged violations.

27 **IT IS THEREFORE ORDERED** that plaintiff's application to proceed *in forma pauperis*
 28 (#1) is **GRANTED**.

